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FILED
Clerk
District Court

SEP 18 2008

For The Northern Mariana Islands
By _____
(Deputy Clerk)

5

6 Attorneys for the Commonwealth of the Northern Mariana Islands and the Attorney General of
7 the Commonwealth of the Northern Mariana Islands, in his official capacity.

8

9 **THE UNITED STATES DISTRICT COURT**
FOR THE NORTHERN MARIANA ISLANDS

10 **MOHAMMED KAMAL HOSSAIN,**

11 Plaintiff,

12 v.

13 **COMMONWEALTH OF THE**
14 **NORTHERN MARIANA ISLANDS and**
15 **MATTHEW GREGORY, in his official**
16 **capacity as Attorney General of the**
17 **Commonwealth of the Northern Mariana**
18 **Islands, and the UNITED STATES OF**
19 **AMERICA,**

Defendants.

) Civil Action 08-0016

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MAY 10 2002

Clerk
District Court
For The Northern Mariana Islands

4 Attorney for Plaintiffs

5 **IN THE UNITED STATES DISTRICT COURT**
6 **FOR THE NORTHERN MARIANA ISLANDS**

7 **JUYEL AHMED, UTHAYACHANDRAN R.**
8 **KANDIAH, JAYAKUMAR A.**
9 **SEVARATNAM, KANABASABAI**
10 **SELVALINGNAM, JANAKA P. H.**
11 **NADUNGODAGE, MADPATHAGE D. U. D.**
12 **SEANAYAKE, YU REN HUANG, LI**
13 **TONG DENG, ZHI PING HU, YIN PING**
14 **GUO, XI CHENG JIN, LAN TING ZHANG,**
15 **QIN YIN, CHUN FANG YUE, HUI PING**
16 **ZHANG, MHING ZHUO LING, LIN**
17 **ZHENG and JIAN SHAN ZHENG,**

Civil Action No. 00-0005

FIFTH AMENDED
COMPLAINT FOR
INJUNCTIVE,
DECLARATORY, AND
FURTHER RELIEF;
EXHIBITS "A"-“Z”, “A-1”-
“Q-1”, AND “1”-“6”

13 Plaintiffs

14 v.

15 **UNITED STATES OF AMERICA,**
16 **COMMONWEALTH OF THE NORTHERN**
17 **MARIANA ISLANDS, COLIN POWELL in**
18 **his official capacity, JOHN ASCHROFT in**
19 **his official capacity, JOAQUIN AGULTO**
20 **TENORIO in his official capacity, ROBERT**
21 **TENORIO TORRES in his official capacity,**
22 **and DOES 7-25,**

23 Defendants.

24 Caption Continued on Next Page

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COMMONWEALTH'S
EXHIBIT
E

Caption Continued from Preceding Page

RUI LIANG, LIAO DA NIAN,
MOHAMMED KAMAL HOSSAIN and
JANE ROE I,

Civil Action No. 00-0005

Plaintiffs

v.

UNITED STATES OF AMERICA,
COMMONWEALTH OF THE NORTHERN
MARIANA ISLANDS, COLIN POWELL in
his official capacity, JOHN ASHCROFT in
his official capacity, JOAQUIN AGULTO
TENORIO in his official capacity, ROBERT
TENORIO TORRES in his official capacity,
and DOES 7-25.

Defendants.

**FIFTH AMENDED COMPLAINT FOR
INJUNCTIVE, DECLARATORY AND FURTHER RELIEF**

Plaintiffs, through counsel, allege the following:

PARTY PLAINTIFFS (Consolidated Action (Civil Action No. 00-0005)

1. Plaintiff JUYEL AHMED is a citizen of the Islamic Republic of Bangladesh (“IRB”) who is currently within the Commonwealth of the Northern Mariana Islands (“CNMI”) and who, between July 1998 and March 2000, was imprisoned at the CNMI’s Department of Labor and Immigration (“DOLI”) prison.

2. Plaintiff UTHAYACHANDRAN R. KANDIAH is a Sri Lankan citizen of Tamal ethnicity who is presently within the CNMI.

1 3. Plaintiff JAYAKUMAR A. SEVARATNAM is a Sri Lankan citizen of
2 Tamal ethnicity who is presently within the CNMI.

3 4. Plaintiff KANABASABAI SELVALINGNAM is a Sri Lankan citizen of
4 Tamal ethnicity who is presently within the CNMI.

5 5. Plaintiff JANAKA P.H. NADUNGODAGE is a Sri Lankan citizen of
6 Sinhalhese ethnicity who is presently within the CNMI.

7 6. Plaintiff MADPATHAGE D.U.D. SENANAYAKE is a Sri Lankan citizen
8 of Sinhalese ethnicity who is presently within the CNMI.

9 7. Plaintiff YU REN HUANG is a citizen of the People's Republic of China
10 ("PRC") who is presently within the CNMI.

11 8. Plaintiff LI TONG DENG is a PRC citizen who is presently within the
12 CNMI.

13 9. Plaintiff ZHI PING HU is a PRC citizen who is presently within the
14 CNMI.

15 10. Plaintiff YIN PING GUO is a PRC citizen who is presently within the
16 CNMI.

17 11. Plaintiff XI CHENG JIN is a PRC citizen who is presently within the
18 CNMI

19 12. Plaintiff LAN TING ZHANG is a PRC citizen who is presently within the
20 CNML.

21 13. Plaintiff QIN YIN is a PRC citizen who is presently within the CNMI.

22 14. Plaintiff CHUN FANG YUE is a PRC citizen who is presently within the
23 CNMI.

1 15. Plaintiff HUI PING ZHANG is a PRC citizen who is presently within the
2 CNMI.

3 16. Plaintiff MHING ZHUO LING is a PRC citizen who is presently within
4 the CNMI.

5 17. Plaintiff LIN ZHENG is a PRC citizen who is presently within the CNMI.

6 18. Plaintiff JIAN SHAN ZHENG is a PRC citizen who is presently within the
7 CNMI.

8 **PARTY PLAINTIFFS (Consolidated Civil Action No. 99-0046)**

9 19. Plaintiff RUI LIANG ('Liang") is a PRC citizen who is presently within
10 the CNMI.

11 20. Plaintiff LIAC DA NIAN ("Nian") is a PRC citizen who is presently
12 within the CNMI.

13 21. Plaintiff MOHAMMED KAMAL HOSSEIN is an IRB citizen who is
14 presently within the CNMI.

15 22. Plaintiff JANE ROE 1 ("Roe") is a PRC citizen presently within the
16 CNMI. Roe has filed this lawsuit using a pseudonym in place of Roe's actual name for
17 the reason that special circumstances justify the use of this pseudonym, including the
18 need to protect Roe and Roe's PRC-situated family members from harassment, injury,
19 ridicule, serious risk of bodily harm, risk of retaliatory physical and/or mental harm,
20 employer reprisals and governmental reprisals.

21 **PARTY DEFENDANTS (Both Consolidated Civil Actions)**

22 23. Defendant UNITED STATES OF AMERICA ("U.S." and/or "Federal
23 Government") is a governmental entity.

1 24. Defendant COMMONWEALTH OF THE NORTHERN MARIANAS
2 ISLANDS (“CNMI” and/or “CNMI Government”) is a governmental entity.

3 25. Defendant COLIN POWELL (“Powell”) is Secretary of the U.S.
4 Department of State (“State Department”), and is named as a Defendant in his official
5 capacity.

6 26. Defendant JOHN ASHCROFT (“Ashcroft”) is the U.S. Attorney General,
7 head of the U.S. Department of Justice (“Justice Department”), and is named as a
8 Defendant in his official capacity.

9 27. Defendant JOAQUIN AGULTO TENORIO (“Tenorio”) is Acting
10 Secretary of the CNMI Department of Labor and Immigration (“DOLI”), and is named as
11 a Defendant in his official capacity.

12 28. Defendant ROBERT TENORIO TORRES (“Torres”) is the CNMI
13 Attorney General, and is named as a Defendant in his official capacity.

14 29. Defendants Does 7 – 25 (“Does” and/or “Doe Defendants”)^{1/} are sued
15 herein under fictitious names for the reason that, despite diligent and good faith efforts to
16 obtain information, Does’ true names, identities, and capacities are presently unknown to
17 Plaintiffs, except that they include but are not limited to persons and/or entities who have
18 injured and/or harmed Plaintiffs, who have violated rights and protections guaranteed to
19 Plaintiffs by effect of the Commonwealth Code, CNMI common law, the Commonwealth

20 _____
21 ^{1/} Two previously-named Doe Defendants were later dismissed with prejudice as
22 party-defendants in this lawsuit. Those defendants were: (i) former CNMI Assistant
23 Attorney General Robert Goldberg (“Goldberg”), a CNMI-licensed lawyer; and, (ii)
24 former DOLI Secretary Mark Zachares (“Zachares”), also a CNMI-licensed lawyer. With
the naming of four new defendants in this Fifth Amended Complaint—Powell, Ashcroft,
Tenorio, and Torres—a total of five Doe Defendants have been identified to date.

1 Constitution, Federal statutory law (including but not limited to 28 U.S.C. sec. 1350),
 2 Federal common law, the Constitution of the United States of America, the 1951
 3 Convention Relating to the Status of Refugees (“1951 Convention”),^{2/} the United Nations
 4 Protocol Relating to the Status of Refugees (“1967 Protocol”),^{3/} the United Nations
 5 Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment of
 6 Punishment (“1985 Torture Convention”),^{4/} the Foreign Affairs Reformation and
 7 Restructuring Act (“FARR Act”),^{5/} the Immigration and Naturalization Act, 8 U.S.C.A.
 8 sec. 1157, the Restatement (Third) of Foreign Relations Law, International/Customeary
 9 Law (relating to human rights) binding on the Federal and CNMI governments by effect
 10 of *jus cogens* and other principles,^{6/} the law of nations and/or treaties of the U.S. and/or
 11 CNMI governments, and the Torture Victim Protection Act of 1991 (“1991 Alien Torts
 12
 13
 14

15 ^{2/} (July 28, 1951), 19 U.S.T. 6259, 6275, T.I.A.S. No 6577, 189 U.N.T.S. 150; see
 16 also 7 C.C sec. 3401; Restatement (Third) of Foreign Relations Law, at secs. 102(1),
 102(2), 111(1).

17 ^{3/} (Jan. 31, 1967), 10 U.S.T. 6223, T.I.A.S. No. 6577; see also, 7 CMC sec. 3401;
 18 Restatement (Third) of Foreign Relations Law, at secs. 102(1), 102(2), 111(1).

19 ^{4/} G.A.O.R. A/39/506 (1984), 23 I.L.M. 1027 (1984) (modified in 24 I.L.M. 535
 20 (1985)), S. Treaty Doc. No. 110-20, 100th Cong. 2d Sess. 7 (1988).

21 ^{5/} Pub. L. No. 105-277, §2242, 1999 U.S.C.C.A.N. §871.

22 ^{6/} See e.g., 7 CMC §3401; Restatement (Third) of Foreign Relations Law, at
 23 §§102(1)(a), 102(2), 701(b), 702(d)(e).

1 Claim Act" or "ATCA"),⁷ who have violated those laws/treaties to Plaintiffs' detriment,
2 who have otherwise harmed and damaged Plaintiffs or, in some manner presently
3 unknown to Plaintiffs, were engaged or shall engage in those activities or other activities
4 alleged in this civil action.

5 30. Doe Defendants conducted the previously described activities, or intend to
6 conduct such activities, in an intentional or in an inequitable or in a negligent and/or
7 otherwise wrongful manner, which activities were or shall be a legal cause of injuries or
8 damages to the Plaintiffs, and/or were in some manner (or shall be) related to the named
9 Defendants.

10 31. Plaintiffs and/or their representatives have made diligent and good faith
11 efforts to ascertain the full names and identities, and the extent and nature of interests, of
12 additional defendants, and the events upon which Plaintiffs' claims are premised.

13 32. Plaintiffs remain unable at this time to identify with particularity Doe
14 defendants (and/or their nationalities and/or their titles and/or their relationships to
15 Defendants as employees or independent contractors or officers or directors or
16 shareholders) against whom Plaintiffs have additional prospective claims, and seek leave
17 to amend this Fifth Amended Complaint ("Complaint") in order to name and identify Doe
18 defendant if and when the identities of those various Doe defendants is more fully and
19 accurately determined.

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23 ⁷ See Pub.L. 102-256, Mar. 12, 1992, 106 Stat. 73, §§2, 3(b), 28 U.S.C.A. §1350.

24

JURISDICTION

2 Plaintiffs repeat and reallege and incorporate herein by reference each and every
3 allegation contained in the preceding paragraphs.

4 33. This Court has personal jurisdiction over the Plaintiffs.

5 34. This Court has personal jurisdiction over Defendant U.S..

6 || 35. This Court has personal jurisdiction over Defendant CNMI.

7 36. This Court has personal jurisdiction over Defendant Powell.

7 36. This Court has personal jurisdiction over Defendant Powell.

8 37. This Court has personal jurisdiction over Defendant Ashcroft

9 ||| 38. This Court has personal jurisdiction over Defendant Tenorio.

10 39. This Court has personal jurisdiction over Defendant Torres.

11 40. This Court has original subject matter jurisdiction over this civil action
12 pursuant to federal law including 28 U.S.C. §§1331/1330 and/or the Administrative
13 Procedure Act, 5 U.S.C. §702, and/or 42 U.S.C. §§1983 and 1985, in that Plaintiffs'
14 claims involve:

15 a. the construction or interpretation of treaties and/or international
16 agreements, the law of nations, and/or international/customary law, and/or
17 international protocols (including the 1951 Convention, the 1967 Protocol [as
18 incorporated in customary international law through the Restatement] and the
19 1985 Torture Convention) to which the U.S. Government has acceded and to
20 which the CNMI Government is thereby bound and obligated pursuant, inter alia,
21 to the Restatement (Third) of Foreign Relations Law and principles of *jus cogens*;
22 and/or

5 41. This Court, pursuant to federal law including 28 U.S.C. §1337 (a), has
6 supplemental jurisdiction over all other claims alleged by Plaintiffs in this civil action,
7 which claims form part of the same controversy.

8 42. The factual and jurisdictional grounds upon which Plaintiffs' claims are
9 premised entitle Plaintiffs to equitable, injunctive, and declaratory relief, as well as to
10 legal relief including monetary damages and attorneys' fees.

11 43. Venue of the claims at issue in this proceeding lies with this Court in
12 accordance with federal law including 28 U.S.C. §1391, and in accordance with other
13 legal and equitable principles.

14 44. The CNMI is the situs of the wrongs committed against the Plaintiffs and
15 the witnesses and parties are, in the main, situated within the CNMI.

16 BACKGROUND ALLEGATIONS COMMON TO ALL CLAIMS

17 45. Plaintiffs repeat and reallege and incorporate herein by reference each and
18 every allegation contained in the preceding paragraphs.

19 46. Plaintiffs include IRB national JUYEL AHMED, a practitioner of the
20 Muslim religion, who, as described in his February 24, 2000, declaration appended to this
21 Complaint and designated as Exhibit "A" and his supplemental February 27, 2000,
22 declaration appended to this Complaint and designated as Exhibit "B", has previously
23 been persecuted and tortured in Bangladesh, see, e.g., Exhibit "A" at ¶4, and who, if

1 repatriated and forced to return to Bangladesh will be further persecuted and/or tortured
2 by effect of Bangladesh governmental and/or institutional policies/procedures and/or lack
3 of policies/procedures.

4 47. Plaintiffs include IRB national Hossain who, as the result of having
5 provided testimony on behalf of the U.S. in the criminal proceeding designated No. 1:96,
6 CR 00037-001, see, Exhibit "1", has been subjected to threats of physical violence
7 (including death) against himself and his IRB-situated family. See, Exhibits "2" – "6".
8 Despite this cooperation with U.S. law enforcement officials, as acknowledged in letters
9 dated December 17, 1998 and November 23, 1999, from Assistant U.S. Attorney Gregory
10 Baka, see, Exhibits "3" and "6", letters dated July 8 1998, and March 22, 1999 from U.S.
11 Office of Insular Affairs Director Allen P. Stayman, see Exhibits "2" and "4", and others
12 from the U.S. Department of Justice, see e.g., Exhibit "5", neither the U.S. Government
13 nor the CNMI Government has provided to Hossain and his family any of the protections
14 Hossain has requested.

15 48. Plaintiffs include Plaintiff Roe who, as the result of having challenged
16 policies and procedures involving the CNMI garment industry, the CNMI's Department
17 of Labor and Immigration ("DOLI") and/or asylum/refugee/torture protection issues, has
18 been subjected to threats of physical violence and reprisal (including death) against
19 herself and her PRC-situated family.

20 49. Plaintiffs include Sri Lankan nationals who, if repatriated and forced to
21 return to Sri Lanka, would be persecuted by the government of Sri Lanka, and by the
22 effect of the violent 10-plus year civil war now raging in Sri Lanka between persons of
23 Tamil and Sinhalese ethnicity.

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1 50. Plaintiffs include PRC nationals who, if repatriated and forced to return to
2 PRC, would be persecuted and/or tortured by effect of inhumane policies adopted and
3 perpetuated by the PRC Government, including, but not limited to, the PRC's well-
4 documented and continuing persecution of the Falun Gong movement, the infliction of
5 pain/torture upon PRC nationals by the PRC Government upon PRC nationals who have
6 criticized their government in a manner similar to that of the Plaintiffs in this case, the
7 PRC-based persecution of persons based on religion including persons who practice
8 Catholicism, PRC-based persecution of female adults who give birth to more than one
9 child, and/or other PRC Government policies.

10 51. The U.S. Government is empowered with authority over all U.S. treaties,
11 protocols, international human rights obligations, matters of international law and matters
12 falling within the scope of and/or delegated to the U.S. Department of State, the U.S.
13 Department of Justice (including the U.S. Immigration and Naturalization Service), and
14 by effect of federal laws including the U.S. Immigration and Naturalization Act ("INA").

15 52. The U.S. Government, by virtue of its sovereignty, has jurisdiction over all
16 persons within the borders of the U.S. mainland, within all of the 50 U.S. states, and
17 within all U.S. territories, commonwealths, and possessions—including the CNMI.

18 53. The U.S. Government was required to serve as fiduciary to the CNMI prior
19 to enactment of the Covenant to Establish a Commonwealth of the Northern Mariana
20 Islands in Political Union with the United States of America ("Covenant") in accordance
21 with that entity established and recognized by the United Nations as the Trust Territory of
22 the Pacific Islands ("TT").

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1 54. Throughout the TT's existence the U.S. Government's fiduciary duties
2 obligated the U.S. Government to provide, administer, protect, and otherwise regulate
3 human rights and immigration matters within the CNMI, including, but not limited to,
4 issues relating to asylum/refugee requests and protection, and requests for protection from
5 torture by persons situated within the CNMI who originated from PRC, Sri Lanka,
6 Bangladesh and elsewhere.

7 55. Following enactment of the Covenant, the U.S. Government retained
8 control of various matters, including the application of the INA within the CNMI, under
9 various circumstances.

10 56. The INA continues to be applicable today, within the CNMI, under various
11 circumstances.

12 57. Following enactment of the Covenant, the U.S. Government retained
13 control, and today retains control, over various matters, including:

14 a. the application of international human rights obligations within the
15 CNMI;

16 b. the processing of, and due process relating to,
17 asylum/refugee/torture protection applications and obligations, within the CNMI;
18 and,

19 c. the resolution of issues relating to asylum/refugee/torture
20 protection requests by, and related due process measures relating to, persons
21 within the CNMI who originated from Sri Lanka, Bangladesh, the PRC and
22 elsewhere.

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1 58. The U.S. Government has acceded to the 1967 Protocol which, together
2 with customary/international law, the law of nations and the doctrine of *jus cogens*,
3 mandates compliance by the U.S. with both the 1967 Protocol and the 1951 Convention.

4 59. The U.S. Government has acceded to the 1985 Torture Convention
5 (“1985 Torture Convention”) which, together with customary/international law, the law
6 of nations and the doctrine of *jus cogens*, mandates compliance by the U.S. with the 1985
7 Torture Convention.

8 60. The U.S. has enacted the Alien Tort Claims Act (“ATCA”), the FARR
9 Act, civil rights protections under 42 U.S.C. §§1983 et. seq., and other laws, mandating
10 compliance by U.S. Government officials with those laws, and providing rights of action
11 for the benefit of those subjected to violation of the terms of those laws.

12 61. The U.S. Government’s accession to the 1967 Protocol binds and obligates
13 the CNMI Government as to both the 1967 Protocol and the 1951 Convention by effect of
14 Article 1, sec. 102 of the Covenant.

15 62. The U.S. Government’s accession to the 1985 Torture Convention binds
16 and obligates the CNMI Government as to both the 1985 Torture Convention by effect of
17 Article 1, sec. 102 of the Covenant.

18 63. The U.S. Government’s enactment of the ATCA, the FARR Act, and 42
19 U.S.C. §§1983 et. seq., binds and obligates the CNMI Government and CNMI
20 Government officials to comply with all portions of those laws by effect of Article 1,
21 §§102 and 105 of the Covenant.

22 64. The Convention, and the 1967 Protocol, having been adopted within the
23 Restatement (Third) of Foreign Relations Law, at §§701 et seq., also constitutes CNMI
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1 law independent of any CNMI-U.S. political relationship, and is binding and obligatory
2 within and upon the CNMI Government by effect of 7 CMC §3401.

3 65. The CNMI, independent of the U.S. Government, is further bound and
4 obligated to comply with the 1967 Protocol, the 1951 Convention and the 1985 Torture
5 Convention by effect of customary/international human rights law statutorily binding
6 upon the CNMI by effect of 7 CMC §3401 which adopts Restatement (Third) of Foreign
7 Relations Law §§111(1), 102(1), 102(2), in addition to §701 et seq.

8 66. The CNMI, independent of the U.S. Government, is also bound and
9 obligated to provide to Plaintiffs those protections made available via the 1967 Protocol,
10 the 1951 Convention, and the 1985 Torture Convention by effect of the law of nations
11 and the doctrine of *jus cogens*.

12 67. Neither the Federal Government nor the CNMI Government has enacted
13 meaningful policies or procedures by which those governments adequately ensure that
14 they uphold their obligations to persons seeking asylum/refugee status within the CNMI
15 under either Federal law, or the 1967 Protocol and the 1951 Convention or in accordance
16 with customary/international human rights, the law of nations or the doctrine of *jus*
17 *cogens*.

18 68. Neither the Federal Government nor the CNMI Government has enacted
19 meaningful policies or procedures by which those governments adequately ensure that
20 they uphold their obligations to persons seeking protection within the CNMI from those
21 activities deemed improper under the 1985 Torture Convention or from torture as such
22 torture is defined and deemed unlawful by effect of customary/international human rights
23 laws, the law of nations or the doctrine of *jus cogens*.

1 69. On at least one prior occasion a person then situated within the CNMI
2 sought asylum/refugee/torture protection with the assistance of Mr. Phil Kaplan via the
3 Karidat office funded by the CNMI and Federal governments, which asylum applicant
4 was eventually granted asylum, and then departed the CNMI to reside in New Zealand.

5 70. On at least one prior occasion, during May-June 2000, there was
6 transmitted to U.S. INS officials from the CNMI an asylum/refugee/torture protection
7 application on behalf of a CNMI-situated person. In response, INS officials in the
8 Mainland U.S. caused to be transmitted to the CNMI-situated applicant a notification
9 letter which, upon information and belief, advised the applicant to proceed to the
10 Territory of Guam during a by-then-lapsed-multi-day time period, to undergo asylum
11 fingerprinting. Subsequently, upon further information and belief, CNMI-situated INS
12 officer Oscar Martinez, after learning of this situation, notified the applicant's lawyer,
13 CNMI-based attorney Paul Lawlor, that the notification letter would be retracted by INS
14 officials in the near future.

15 71. On at least one prior occasion during April 2000, CNMI-situated
16 asylum/refugee/torture protection seekers, including Plaintiff Ahmed, boarded a United
17 States naval vessel situated within the CNMI, at Saipan Harbor, requested that the
18 vessel's Commanding Officer entertain their asylum/refugee/torture protection requests
19 and provide asylum/refugee/torture protection processing, which request was denied
20 while those persons were aboard the vessel and after the Commanding Officer had been
21 provided relevant asylum/refugee/torture protection documentation pertaining to that
22 request. During this encounter, at least one CNMI-employed police officer attempted to
23 board the U.S. naval vessel and to arrest Plaintiff Ahmed and his fellow-seekers, which
24

1 boarding and arrest were then prevented by the Commanding Officer who invoked and
2 explained his own Federal jurisdiction upon the vessel.

3 72. The INS regularly publishes and distributes a document known as Form I-
4 590.

5 73. Plaintiffs—physically present on Saipan in the CNMI---have each
6 completed a Form I-590, as exemplified by a sample Form I-590 application appended to
7 this Complaint and designated Exhibit "C".

8 74. The I-590 forms completed by Plaintiffs have been transmitted to INS
9 offices situated at Saipan, Honolulu, Bangkok and Manila (see, e.g., Exhibits "D" – "F")
10 for processing by INS officials in accordance with INS asylum/refugee/torture protection
11 standards made applicable under U.S. law, but INS's Saipan representative Oscar
12 Martinez ("Martinez")—the INS official then assigned to operate the sole CNMI-situated
13 INS office—refused to accept Plaintiffs' I-590 applications, see, e.g., Exhibits "E" – "G",
14 refused to accept other documents transmitted to his INS office in Saipan, see, e.g.,
15 Exhibit "H", and has returned Plaintiffs' completed I-590 forms to Plaintiffs' attorney's
16 office.

17 75. The I-590 forms completed by Plaintiffs have been transmitted to INS
18 offices situated in Saipan, Honolulu, Bangkok and Manila for processing by INS officials
19 in accordance with United Nations and/or Federal asylum/refugee/torture protection
20 standards made applicable under treaties and/or international law agreements, and/or
21 customary international law, and/or international protocols (including the 1951
22 Convention and the 1967 Protocol).

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1 76. Persons seeking protection under the 1985 Torture Convention are
2 required, as a prerequisite, to exhaust asylum/refugee procedures.

3 77. Plaintiffs have attempted to acquire the protections required to be made
4 available pursuant to the 1985 Torture Convention, including, but not limited to,
5 protection from torture and protection afforded by effect of non refoulement. See, e.g.,
6 Exhibit "F".

7 78. On August 10, 1999, Mr. Martinez, the INS official then-assigned to
8 operate the only CNMI-situated INS office, provided notice to Plaintiffs and other
9 similarly situated persons that neither the CNMI-situated INS office manned by Mr.
10 Martinez, nor any other INS office, will or are required to accept for submission and
11 processing any I-590 forms from CNMI-situated applicants. See, e.g., Exhibits "E" and
12 "G". This notice was and is false and/or contrary to law and had the intended purpose
13 and effect of misleading the Plaintiffs to believe that they have no refugee/asylum/torture
14 protection rights available to them under U.S. law and/or for the purpose of concealing
15 information from Plaintiffs, suppressing and/or subverting and/or thwarting Plaintiffs'
16 rights, and/or interfering with Plaintiffs' rights.

17 79. Neither Mr. Martinez, any other U.S. official, nor any CNMI official, since
18 August 10, 1999, has refuted, recanted or overruled Mr. Martinez's August 10, 1999
19 notice.

20 80. On August 12, 1999, information pertaining to the CNMI Government's
21 policy respecting I-590 applicants, asylum/refugee/torture protection, and the recent
22 involvement of INS officials on the Island of Tinian was sought from both the CNMI
23 Office of the Attorney General ("OAG") via letter to Acting Attorney General Maya
24

1 Kara, and from the CNMI's Department of Labor and Immigration ("DOLI") via letter to
2 DOLI Secretary Mark Zachares, pursuant to 1 CMC Division 9 (the CNMI "Open
3 Government Act"). See, Exhibit "I".

4 81. Neither Mr. Zachares nor any other DOLI official has ever responded to
5 the August 12, 1999 Open Government Act request.

6 82. On March 1, 2002, a follow-up request was transmitted in writing to
7 present CNMI Attorney General/Defendant Torres, and to his subordinate CNMI
8 Assistant Attorney General Andrew Clayton ("Clayton"). A copy of that letter, appended
9 as the first of sixteen exhibits appended to Plaintiffs' pleading, was filed with the Court
10 on March 21, 2002.

11 83. To date, no documents, no materials, and no requested information, have
12 been provided by Ms. Kara, Mr. Zachares, Defendant Torres, Mr. Clayton, Defendant
13 Tenorio, any past CNMI Acting or Confirmed CNMI Attorney General, any OAG or
14 DOLI personnel, or any other CNMI representative or entity, in response to the August
15 20, 1999 Open Government Act request, or to the March 1, 2002 follow-up Open
16 Government Act request.

17 84. Defendant CNMI, together with Defendant Torres and Defendant Tenorio,
18 and through others employed by the CNMI and/or supervised by Defendant Torres and
19 Defendant Tenorio, are responsible for the administration, supervision and enforcement
20 of laws applicable to and within the CNMI.

21 85. Defendant U.S., together with Defendant Ashcroft and Defendant Powell,
22 and through others employed by the U.S. and/or supervised by Defendant Ashcroft and
23
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1 Defendant Powell, are responsible for the administration, supervision and enforcement of
2 Federal laws applicable to the CNMI for the benefit of persons within the CNMI.

3 86. Defendant CNMI hired and/or appointed Defendant Torres, Defendant
4 Tenorio, Goldberg, Zachares, Clayton, and other lawyers and/or persons, with Defendant
5 Torres and Defendant Tenorio now tasked with primary responsibility for the
6 administration, supervision and enforcement of CNMI asylum/refugee/torture protection
7 obligations, policies, and procedures, and with CNMI immigration laws.

8 87. Defendant Ashcroft and Defendant Powell create, administer, supervise
9 and enforce—or neglect and/or fail to create, administer, supervise, and enforce—U.S.
10 policies and procedures and make or neglect/fail to make policy decisions, including, but
11 not limited to, policies and procedures relating to asylum/refugee/torture protection
12 within the U.S. and applicable within the CNMI.

13 88. Defendant Torres and Defendant Tenorio create, administer, supervise and
14 enforce—or neglect and/or fail to create, administer, supervise, and enforce---CNMI
15 policies and procedures and make or neglect/fail to make policy decisions, including, but
16 not limited to, policies and procedures relating to asylum/refugee/torture protection
17 within the CNMI. Goldberg, Zachares, and others, when formerly employed by the
18 CNMI and while at DOLI, performed and/or failed to perform similar functions.

19 89. Defendant Ashcroft and Defendant Powell provide instruction and
20 direction and instruct and direct U.S.-employed personnel (and/or fail to do so),
21 including, but not limited to persons working at the U.S. Department of Justice (including
22 the Office of the U.S. Attorney and the INS) and the U.S. Department of State.

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1 90. Defendant Torres and Defendant Tenorio provide instruction and direction
2 and instruct and direct CNMI-employed personnel (and/or fail to do so), including, but
3 not limited to persons working at the Office of the CNMI Attorney General ("OAG"), and
4 at DOLI including DOLI's prison facility. Goldberg, Zachares, and others, when
5 formerly employed by the CNMI, performed and/or failed to perform similar duties.

6 91. Upon information and belief Goldberg's salary was paid by DOLI.

7 92. Upon information and belief, Goldberg's salary, although paid by DOLI,
8 was funded in whole or in part by the Federal government.

9 93. Plaintiff AHMED was imprisoned at DOLI's prison facility between July
10 1998 and March 2000. Plaintiffs Liang and Nian were similarly imprisoned in DOLI's
11 prison facility during Fall/Winter 2000.

12 94. Defendant CNMI, Defendant U.S., and Doe Defendants, in tandem with
13 Goldberg, Zachares, and others, devised, planned and implemented policies and
14 procedures relating to the imprisonment of various DOLI prisoners, including Plaintiffs
15 AHMED, LIANG AND NIAN.

16 95. Defendant CNMI, Defendant U.S., and Doe Defendants, in tandem with
17 Goldberg, Zachares, and others, devised, planned and implemented policies and
18 procedures relating specifically and exclusively to the imprisonment of Plaintiffs
19 AHMED, LIANG AND NIAN.

20 96. In devising, planning and implementing policies and procedures relating to
21 the imprisonment of Plaintiffs Ahmed, Liang and Nian, Defendant Goldberg authorized,
22 condoned and acquiesced in ignoring and disregarding the liberty interest of Plaintiffs
23 Ahmed, Liang and Nian.

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1 97. In devising, planning and implementing policies and procedures relating to
2 the imprisonment of Plaintiffs Ahmed, Liang and Nian, Defendant CNMI, Defendant
3 U.S., and Doe Defendants, in tandem with Goldberg, Zachares, and others, authorized,
4 ratified, condoned and acquiesced in those Defendants' adopting a custom and pattern of
5 practice of ignoring and disregarding the liberty interests of Plaintiffs AHMED, LIANG
6 AND NIAN, in violation of and disregard of the liberty interests guaranteed to AHMED,
7 LIANG AND NIAN by effect of CNMI law, Federal law, the CNMI Constitution and the
8 U.S. Constitution.

9 98. Plaintiffs possess liberty interests and property rights to be free from
10 arbitrary and indefinite and capricious detention, which interest/rights arise by effect of
11 CNMI law, Federal law, the CNMI Constitution and the U.S. Constitution. See, e.g., 3
12 CMC secs. 4341(d), 4382(b), 4382(c).

13 99. Zachares was appointed DOLI's Acting Secretary by effect of a CNMI
14 memorandum dated February 11, 1998, during the then-CNMI-administration headed by
15 former CNMI Governor Pedro P. Tenorio. This designation was reiterated in a second
16 CNMI memorandum dated May 4, 1998. Three weeks later, on May 28, 1998, Zachares'
17 appointment was confirmed, removing his "Acting Secretary" title, in lieu of the
18 permanent "Secretary" position he then held through January 2002.

19 100. On December 27, 2001, the Court ordered Defendant CNMI to provide
20 materials to the court. Only then—by way of a submission filed January 4, 2002, see,
21 Exhibit "G-1", which submission Defendant CNMI did not voluntarily provide to
22 Plaintiffs, id. at p.2, lines 16-21—did the CNMI and Zachares disclose, in Zachares'
23 January 4, 2002 declaration, see Exhibit "H-1", the existence of a letter received 3 years
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1 and 7 months earlier from then-INS Commissioner Doris Meissner to then-CNMI
 2 Governor Tenorio dated May 15, 1998. See, Exhibit "I-1".

3 101. The May 15, 1998 letter ("letter"), similarly, had never been disclosed by
 4 Defendant U.S., the multitude of U.S.-employed attorneys in this proceeding, or anyone
 5 connected to this proceeding since its inception 2 years and 8 months ago.

6 102. The letter, in pertinent part, documents the CNMI's failure to recognize
 7 and/or abide by CNMI and U.S. asylum/refugee/torture protection requirements, while
 8 memorializing the CNMI's deportation of two Sri Lankan nationals at that time to their
 9 home country despite their prior efforts---known to CNMI officials---to be afforded their
 10 asylum/refugee/torture protection rights. Id. In part, the letter stated: "It is essential that
 11 the CNMI stay the deportation of any individual identified by...the United States
 12 Government as a potential refugee until appropriate resolution of that individual's claim
 13 to refugee status." Id. at p.1, ¶3.

14 103. Defendant CNMI, by and through Defendant Torres and Defendant
 15 Tenorio, and in apparent tandem with and/or acquiescence and/or ratification by,
 16 Defendant U.S. and/or Defendant Ashcroft and/or Defendant Powell and/or Doe
 17 Defendants and/or their respective employees and agents, nevertheless continue—as
 18 recently as two months ago, to deport CNMI-situated persons to their countries of origin,
 19 despite the fact known to CNMI officials that such persons have submitted requests for
 20 asylum/refugee/torture protections, which submissions are pending as the applicants are
 21 nonetheless deported by the CNMI.

22 104. The facts alleged in the previous example have been memorialized by
 23 documents, including CNMI Superior Court pleadings, relating to PRC citizen Zhen Wen
 24

1 Zhu, who was taken into custody on a recent Friday afternoon by CNMI officials, while
2 there telephoned CNMI resident Juan Santos ("Santos"), notified Mr. Santos that DOLI
3 would deport him the following Sunday, and was then whisked from the CNMI by
4 airplane as explained May 10, 2002 by Mr. Santos. These documents include copies of:
5 (i) the I-590 application signed by Mr. Zhu and submitted on his behalf by CNMI-situated
6 attorney Joseph A. Arriola, Exhibit "J-1"; (ii) A cover letter drafted and signed by Mr.
7 Arriola which, together with the enclosed I-590 form, was then transmitted to various
8 U.S. and CNMI agencies, Exhibit "K-1" by certified mail and otherwise, Exhibit "L-1";
9 (iii) the written order by which CNMI Superior Court Judge David A. Wiseman, on
10 January 24, 2002, memorialized having received notice of the I-590 submission, Exhibit
11 "L-1" at p.1, lines 21-27; (iv) a CNMI-published newspaper article, published 12 days
12 later on February 5, 2002, in which Defendant Torres acknowledges the applicability of
13 asylum/refugee/torture protections to and within the CNMI, Exhibit "M-1"; (v) the notice
14 signed February 4, 2001 by Judge Wiseman, memorializing again both Judge Wiseman's
15 and the OAG's receipt of a copy and notice of Mr. Zhu pending asylum/refugee/torture
16 protection request, Exhibit "O-1", at p.2, ¶1 (Exhibit "N-1" omitted intentionally); and,
17 (vi) Judge Wiseman's subsequent order documenting that Mr. Wen was in fact ordered
18 deported by the CNMI Superior Court on February 14, 2002, Exhibit "P-1", before being
19 taken into CNMI custody, imprisoned at the DOLI jail, and physically removed from the
20 CNMI as reported by Mr. Santos.

21 105. On April 18, 2002 in this proceeding, as documented by the transcript
22 excerpt appended as Exhibit "Q-1", the Court agreed with CNMI attorney Clayton "that
23 the Commonwealth has been embarrassed by this case", pointed out that "[t]he United
24

1 States or the Commonwealth has a duty to either promulgate some rules that are
 2 consistent with the international treaties that the United States is a signatory of", and
 3 remarked that "both of them can't sit on the side lines pointing the fingers at each other."
 4 Id.

5 **FIRST CLAIM FOR RELIEF**

6 106. Plaintiffs by this reference reallege and incorporate the allegations set forth
 7 in the preceding paragraphs.

8 107. Plaintiffs state this claim for declaratory and injunctive relief against
 9 defendants Powell, Ashcroft, Tenorio and Torres, and\or other officials of the United
 10 States of America who are presently unknown to plaintiffs, and\or other officials of the
 11 Commonwealth of the Northern Mariana Islands who are presently unknown to plaintiffs,
 12 in their official capacities, to enforce their rights to a determination of their status as
 13 refugees and to be free from refoulement and deportation pending such determination
 14 pursuant to federal law, including 42 U.S.C. sec. 1983.

15 108. Plaintiffs have a well founded fear of being subject to personal and
 16 political persecution, torture, inhumane treatment, punishment, loss of liberty, physical
 17 and emotional pain and suffering, involuntary separation from their children, spouses and
 18 other family members, and\or other severe harms cognizable under international law if
 19 they are refouled or deported. Plaintiffs can demonstrate that they would be threatened
 20 and\or that there is a clear probability they would suffer these grievous injuries if they
 21 were refouled or deported.

22 109. Plaintiffs have a substantive right to seek refugee status pursuant to § 207
 23 of the INA, and\or pursuant to international law.

24

1 110. Plaintiffs have a substantive right to be free from refoulement pending a
2 determination of their refugee status pursuant to § 207 of the INA and\or pursuant to
3 international law.

4 111. The Commonwealth of the Northern Mariana Islands has duties to
5 determine plaintiff's eligibility for refugee status and protect plaintiffs from refoulement
6 or deportation pending such determination arising under international law.

7 112. The United States of America has duties to determine plaintiff's eligibility
8 for refugee status pursuant to § 207 of the INA and to protect plaintiffs from refoulement
9 or deportation pending such determination arising under international law.

10 113. Defendants Powell, Ashcroft, Tenorio and Torres and\or other officials of
11 the United States of America and\or the Commonwealth of the Northern Mariana Islands
12 have duties, jointly and severally, to determine whether plaintiffs are eligible for refugee
13 status and to protect plaintiffs from refoulement and deportation pending any
14 determination of their eligibility for refugee status.

15 114. In the alternative, defendants Tenorio and Torres, and\or other officials of
16 the Commonwealth of the Northern Mariana Islands are under duty arising under
17 international law to determine whether plaintiffs are eligible for refugee status and to
18 protect plaintiffs from refoulement and deportation pending any determination of their
19 eligibility for refugee status.

20 115. Defendants Powell, Ashcroft, Tenorio and Torres, and\or other officials of
21 the United States and\or the Commonwealth of the Northern Mariana Islands have and
22 continue to deny plaintiffs of their right to a determination of their refugee status
23 arbitrarily and without due process.

24

1 116. Defendants Tenorio and Torres continue to threaten plaintiffs with
2 immediate refoulement or deportation without having first ensured that plaintiff's
3 eligibility for refugee status has been finally determined.

4 117. Plaintiffs will suffer irreparable harm, political and personal persecution,
5 pain, torture, imprisonment, denial of their civil rights, and denial of their human rights if
6 they are refouled or deported.

7 118. In the alternative, plaintiffs reasonably fear that they will suffer political
8 and personal persecution, pain, torture, imprisonment, denial of their civil rights and
9 denial of their human rights if they are refouled or deported.

10 119. Plaintiffs now suffer fear, trepidation, humiliation, and severe emotional
11 distress directly and proximately caused by defendants' continuing arbitrary and
12 capricious failure and refusal to determine their eligibility for refugee status.

13 120. Plaintiffs claim right to a declaration by this court of their rights under §
14 207 of the INA to a determination of their eligibility for refugee status by defendants
15 Powell, Ashcroft, and\or other officials of the United States of America.

16 121. Plaintiffs claim right pursuant to 28 U.S.C. § 2201 and\or this court's
17 inherent powers to a declaration of their rights under international law to a determination
18 by defendants Tenorio, Torres, and\or other officials of the Commonwealth of the
19 Northern Mariana Islands of their eligibility for refugee status.

20 122. Plaintiffs claim right pursuant to 28 U.S.C. § 1361, § 1651, § 2202, and\or
21 this court's inherent powers to preliminary and permanent injunctions enjoining
22 defendants Powell, Ashcroft, Tenorio, Torres, and other officials of the United States of
23 America or the Commonwealth of the Northern Mariana Islands from arbitrarily and
24

1 capriciously continuing to deny plaintiffs of their right to a determination of their refugee
2 status without due process of law.

3 123. Plaintiffs claim right pursuant to 28 U.S.C. § 1651, § 2202, and\or this
4 court's inherent powers to preliminary and permanent injunctions enjoining defendants
5 Tenorio and Torres from refouling or deporting plaintiffs at any time before their
6 eligibility for refugee status is finally determined under due process of law.

7 124. Plaintiffs claim right to costs for bringing this action.

8 125. Plaintiffs claim right to attorney fees for bringing this action pursuant to
9 42 U.S.C. § 1988 and\or the Equal Access to Justice Act, (Pub. L. 96-481, Title II, Oct.
10 21, 1980, 94 Stat. 2325).

11

12 **SECOND CLAIM FOR RELIEF**

13 126. Plaintiffs by this reference reallege and incorporate the allegations set forth
14 in the preceding paragraphs.

15 127. Plaintiffs state this claim to enforce their rights to be free from torture and
16 other forms of cruel and inhuman treatment or punishment and to be free from
17 refoulement or deportation to a country where they might be subject to such treatment.

18 128. Plaintiffs states this claim for relief against the Commonwealth officials
19 named herein in their official capacities pursuant to federal law including 42 U.S.C. §
20 1983, the United Nations Convention Against Torture and Other Forms of Cruel and
21 Inhuman or Degrading Treatment or Punishment (Convention Against Torture), and
22 international law.

23

24

1 129. Plaintiffs states this claim for relief against the United States officials
2 named herein pursuant to the Foreign Affairs Reform and Restructuring Act (FARR),
3 Pub. L. No. 105-277, 1999 U.S.C.C.A.N. 871, the Convention Against Torture, and
4 international law.

5 130. The Convention Against Torture is jus cogens and binding on the
6 Commonwealth of the Northern Mariana Islands.

7 131. Plaintiffs have substantive rights to be free from torture, cruel and
8 inhuman treatment, and degrading treatment or punishment arising under the FARR, the
9 Convention Against Torture, and under international law.

10 132. Both the United States of American and the Commonwealth of the
11 Northern Mariana Islands are under mandatory duties to ensure that plaintiffs are not
12 subject to torture, inhuman or degrading treatment or inhuman or degrading punishment
13 or refouled or deported to a country where they might be subject to such treatment.

14 133. Section 2242(b) of the Foreign Affairs Reform and Restructuring Act
15 (FARR) required that the “heads of the appropriate agencies” prescribe regulations within
16 120 days to implement the United States’ obligations under Article 3 of Convention
17 Against Torture.

18 134. Defendants Tenorio and Torres are heads of appropriate agencies within
19 the meaning of the FARR. Defendants Powell and Ashcroft have failed to prescribe
20 regulations applicable in the Commonwealth of the Northern Mariana Islands, and have
21 failed to consult with or take any acts to require defendants Tenorio or Torres to prescribe
22 such regulations to implement the United States of America’s obligations under Article 3
23 of the Convention Against Torture.

24

1 135. Defendants Powell, Ashcroft, Tenorio, and\or Torres have and continue to
2 arbitrarily and capriciously fail and refuse to take any acts to ensure plaintiffs are not
3 subject to torture, inhuman, degrading treatment or punishment, or ensure plaintiffs are
4 not refouled or deported to a country where they might be subject to such treatment.

5 136. Plaintiffs claim right pursuant to 28 U.S.C. § 2201 and\or this court's
6 inherent powers to a declaration of their rights to be free from torture, cruel and inhuman
7 treatment, degrading treatment, or degrading punishment arising under the Convention
8 Against Torture, the FARR, and under international law.

9 137. Plaintiffs claim right pursuant to 28 U.S.C. § 1361, § 1651, § 2202, and\or
10 this court's inherent powers to preliminary and permanent injunctions enjoining
11 defendants Powell, Ashcroft, Tenorio, and\or Torres from subjecting plaintiffs to torture,
12 cruel and inhuman treatment, and degrading treatment or punishment and enjoining them
13 from refouling or deporting plaintiffs to a country where they might be subject to such
14 treatment without due process of law.

15 138. Plaintiffs claim right to a preliminary and permanent injunction mandating
16 that defendants Powell, Ashcroft, Tenorio and\or Torres immediately prescribe
17 regulations to ensure plaintiffs rights are protected under due process of law

18 139. Plaintiffs claim right to costs for bringing this claim.

19 140. Plaintiffs claim right to attorney fees for bringing this claim pursuant to 42
20 U.S.C. § 1988 and\or pursuant to the Equal Access to Justice Act, (Pub.L. 96-481, Title
21 II, Oct. 21, 1980, 94 Stat. 2325).

22 \\

23 \\

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THIRD CLAIM FOR RELIEF

2 141. Plaintiffs by this reference reallege and incorporate the allegations set forth
3 in the preceding paragraphs.

4 142. Plaintiffs state this claim for relief to enforce their rights under the Alien
5 Tort Claims Act and international law as against the Commonwealth of the Northern
6 Mariana Islands.

7 143. The Commonwealth of the Northern Mariana Islands, acting by and
8 through Robert Goldberg, Assistant Attorney General for the Commonwealth of the
9 Northern Mariana Islands, Mark Zachares, Secretary of the Commonwealth Department
10 of Labor and Immigration, DOES 7-25, their supervisors, and others who are unknown to
11 plaintiff, instituted an official government policy of "zero tolerance" toward aliens
12 present in the Commonwealth.

13 144. Part of the Commonwealth's zero tolerance policy included policies and
14 practices of arbitrarily detaining aliens for prolonged periods of time.

15 145. Part of the Commonwealth's zero tolerance policy included denying that
16 aliens have any rights to seek refugee status, to be protected from refoulement or
17 deportation while a determination was made as to refugee status, to be free from arbitrary
18 and prolonged detention, or to be free from .

19 146. Part of the Commonwealth's zero tolerance policy included purposely
20 failing to disclose and affirmatively concealing all information and communications
21 establishing the rights of aliens to apply for refugee status and be protected from
22 refoulement or deportation pending a determination of refugee status.

1 147. Part of the Commonwealth's zero tolerance policy included interfering
2 with, and misrepresenting these rights to all aliens in the Commonwealth, including
3 plaintiffs.

4 148. Part of the Commonwealth's zero tolerance policy included preventing
5 plaintiffs from communicating with the outside world, or hiring or communicating with
6 an attorney with the purpose of denying plaintiffs of all assistance or relief from arbitrary
7 and prolonged detention.

8 149. The Commonwealth's zero tolerance policy directly and proximately
9 caused plaintiffs Ahmed, Liang, and Nian to suffer prolonged arbitrary detention, physical
10 and emotional pain and suffering, fear, trepidation, severe emotional distress, loss of
11 liberty and freedom, loss of their right to work, and denial of their rights to equal
12 protection and due process.

13 150. Plaintiffs claim right to compensatory and punitive damages against the
14 Commonwealth of the Northern Mariana Islands, and DOES 7-25, in their individual
15 capacities, pursuant to the Alien Tort Claims Act and RESTATEMENT (THIRD) OF THE
16 FOREIGN RELATIONS LAW OF THE UNITED STATES § 702.

18 **FOURTH CLAIM FOR RELIEF**

19 151. Plaintiffs by this reference reallege and incorporate the allegations set forth
20 in the preceding paragraphs.

21 152. Plaintiffs states this claim for relief to enforce their right to be free from a
22 conspiracy to deny them of their civil and constitutional rights pursuant to 42 U.S.C. §
23 1985.

1 153. Plaintiffs have rights to apply for refugee status, to be free from
2 refoulement and deportation, and to be free from arbitrary and prolonged detention, to be
3 free from torture, and other forms of cruel and inhuman treatment or punishment under
4 international law, to equal protection, and to due process. Defendants have arbitrarily and
5 capriciously deprived plaintiff of these rights in violation of plaintiff's rights under the
6 Fourteenth Amendment to the United States Constitution.

7 154. Defendants Tenorio, Torres, DOES 7-25, their supervisors and
8 subordinates have and continue to collectively conspire and directly and proximately
9 cause plaintiffs to suffer a deprivation of these rights on the basis of plaintiffs race,
10 nationality, ethnicity, and/or alienage.

11 155. Defendants have and continue to conspire together to withhold and
12 conceal information, to misrepresent facts, to mislead with the purpose denying rights and
13 inducing reliance, and to actually prevent plaintiffs as well as all other aliens in the
14 Commonwealth from learning about or exercising their rights to apply for refugee status;
15 to be free from refoulement or deportation, to be free from arbitrary and prolonged
16 detention, to be free from torture and other forms of cruel and inhuman treatment or
17 punishment, to equal protection, and to due process.

18 156. As a direct and proximate cause and result of the conspiracy among
19 defendants and their acts taken in furtherance of that conspiracy, plaintiffs have suffered
20 harm and injuries including denial of their constitutional, civil and other rights under
21 international law, physical and emotional pain and suffering, fear, trepidation, and severe
22 emotional distress.

23

24

1 157. Plaintiffs claim right pursuant to 42 U.S.C. § 1985 to compensatory and
2 punitive damages in an amount to be shown at trial against defendants Tenorio, Torres,
3 DOES 7-25, together with their supervisors and subordinates for conspiracy.

4 158. Plaintiff claims right to costs for bringing this action.

5 159. Plaintiff claims right to attorney fees for bringing this action pursuant to
6 42 U.S.C. § 1988.

7

8 **FIFTH CLAIM FOR RELIEF**

9 160. Plaintiffs by this reference reallege and incorporate the allegations set forth
10 in the preceding paragraphs.

11 161. Plaintiffs state this claim to enforce their rights to be free from physical
12 harm caused by the concealment of information by government officials pursuant to
13 RESTATEMENT (SECOND) TORTS § 557A.

14 162. Plaintiffs state this claim for relief under the common law of the
15 Commonwealth for concealment against defendants Tenorio, Torres, DOES 1-25, and
16 their supervisors and subordinates.

17 163. For more than two (2) years, Defendants U.S., the CNMI, DOES 7-25, and
18 Mark Zachares and Robert Goldberg intentionally and/or negligently concealed
19 Defendants' knowledge or information concerning the acceptance and processing of
20 asylum/refugee and torture protection applications by plaintiffs PRC, Sri Lanka and
21 Bangladesh citizens within the CNMI, including but not limited to the claims now being
22 asserted by Plaintiffs, and the unconstitutional and unlawful deprivations of their right to
23 due process and equal protection under the United States Constitution and CNMI which

24

1 Plaintiffs and were thereby subjected by the Defendants. (See Exhibit G1 letter from
2 Doris Meissner U.S. Department of Justice to then Governor Pedro P. Tenorio, a copy of
3 which is attached hereto, and incorporated herein)

4 164. Plaintiffs have also attempted to acquire the protections required to be
5 made available pursuant to the 1985 Torture Convention, including, but not limited to,
6 protection from torture and protection afforded by effect of non refoulement. See, e.g.,
7 Exhibit "F".

8 165. On August 10, 1999, Mr. Oscar Martinez, the INS official assigned to
9 operated the only CNMI-situated INS office, provided notice to Plaintiffs and other
10 similarly situated persons that neither the CNMI-situated INS office manned by Mr.
11 Martinez nor any other INS office will accept for submission and processing any I-590
12 forms in direct contradiction to United States law and procedure. See Exhibits "E" and
13 "G" and Meissner letter.

14 166. This statement implied, and Plaintiffs were fraudulently led to believe, and
15 did believe, that the INS office in the CNMI was not empowered to accept asylum
16 applications from CNMI-situated aliens.

17 167. This statement was and is false intentionally misleading and contrary to
18 law, and had the intended purpose and effect of misleading and misinforming the
19 Plaintiffs to believe that they had no refugee/asylum rights available to them under U.S.
20 law.

21 168. Mr. Martinez, an employee of the United States knew or should have
22 known that refuge/asylum petitions pursuant to INA sec. 207 were and are available to
23 alien persons situated outside the United States.

24

1 169. Mr. Martinez knew or should have known that refugee/asylum petitions
2 pursuant to INA sec. 207 were available to alien persons situated in the CNMI.

3 170. Neither Mr. Martinez, any other U.S. official, nor any CNMI official has,
4 since August 10, 1999, refuted, recanted or overruled Mr. Martinez's August 10, 1999,
5 notice, which constituted concealing knowledge or information that he was under an
6 affirmative duty not to conceal.

7 171. On August 12, 1999, information pertaining to the CNMI Government's
8 policy respecting I-590 applicants and the recent involvement of INS officials on the
9 Island of Tinian was sought from both the CNMI Office of the Attorney General
10 ("OAG") via letter to Acting Attorney General Maya Kara, and from the CNMI's
11 Department of Labor and Immigration ("DOLI") via letter to DOLI Secretary Mark
12 Zachares, pursuant to 1 CMC Division 9 (the CNMI "Open Government Act"). See
13 Exhibits "I" and "J".

14 172. Since Plaintiffs were unaware of the concealed knowledge or information,
15 and had relied upon Defendants to comply with Defendants' obligations to provide that
16 knowledge or information to Plaintiffs and others, Plaintiffs were misled by Defendants.

17 173. Defendants' concealment of relevant knowledge and information from the
18 Plaintiffs was intentional and/or negligent.

19 174. Defendants had a duty to disclose true and relevant information to them
20 and an affirmative duty not to mislead Plaintiffs to their detriment.

21 175. Defendants' concealment of relevant knowledge and information from the
22 Plaintiffs was and is in violation of Restatement (Second) of Torts sec. 557A.

23
24